

FEB. 14. 2007 3:14PM

FOLEY 8587926773

RECEIVED
CENTRAL FAX CENTER

NO. 6773 P. 1

FOLEY

FOLEY & LARDNER LLP

FEB 14 2007

ATTORNEYS AT LAW
402 W. BROADWAY, SUITE 2100
SAN DIEGO, CA 92101-3542
TELEPHONE: 619.234.6655
FACSIMILE: 619.234.3510
WWW.FOLEY.COM

FACSIMILE TRANSMISSION

Total # of Pages 8 (including this page)

TO:	PHONE #:	FAX #:
Mail Stop: Amendment Commissioner for Patents United States Patent & Trademark Office		(571) 273-8300

From : Sanjeev K. Dhand
Email Address : sdhand@foley.com
Sender's Direct Dial : 858.847.6860
Date : February 14, 2007
Client/Matter No : 048772-2300
User ID No :

MESSAGE:

Re: U.S. Patent Application Number 09/740,761

Attached Please Find:

- 1) Notice of Appeal in 2 pages
- 2) PTO/SB/33 Form in 1 page
- 3) Pre-Appeal Brief Request for Review in 3 pages
- 4) Credit Card Payment Form in 1 page

If there are any problems with this transmission or if you have not
received all of the pages, please call 619.234.6655.

Operator:	Time Sent:	Return Original To: Juliene P. Britt
-----------	------------	---

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

Cover Page 1 of 1

DLMR 299651.1

PAGE 1/8 * RCVD AT 2/14/2007 6:20:13 PM [Eastern Standard Time] * SVR:USPTO-EFAX-2/12 * DNIS:2738300 * CSID: * DURATION (mm-ss):02:30

FEB. 14. 2007 3:15PM

FOLEY 8587926773

RECEIVED
CENTRAL FAX CENTER

NO. 6773 P. 4


FEB 14 2007

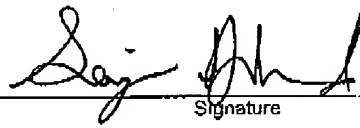
PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0851-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 048772-2300 (formerly 0001.US00)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>On February 14, 2007</p> <p>Signature </p> <p>Typed or printed name <u>Jolene P. Britt</u></p>		Application Number 09/740,761	Filed 12/12/2000
		First Named Inventor Allen B. Gruber	
		Art Unit 3692	Examiner CHENCINSKI, SIEGFRIED E
<p>Applicant requests review of the non-final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/06)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>51,182</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of 1 forms are submitted.</p>			



Signature

Sanjeev K. Dhand
Typed or Printed Name

(858) 847-6860
Telephone Number

February 14, 2007
Date

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

DLMR_300022.1

FEB. 14. 2007 3:15PM

FOLEY 8587926773

RECEIVED
CENTRAL FAX CENTER

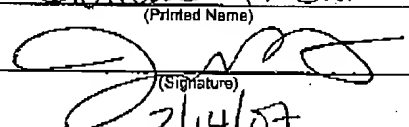
NO. 6773 P. 5

FEB 14 2007

Atty. Dkt. No. 048772-2300
(formerly 0001.US00)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: GRUBER et al.
Title: SYSTEM AND METHOD FOR
INTERACTIVE FUNDRAISING
OVER A WIDE-AREA
NETWORK
Appl. No.: 09/740,761
Filing Date: 12/12/2000
Examiner: CHENCINSKI, SIEGFRIED E
Art Unit: 3692
Confirmation Number: 4312

CERTIFICATE OF FACSIMILE TRANSMISSION I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Alexandria, Virginia on the date below. Julienne P. Butt (Printed Name)  (Signature) 2/14/07 (Date of Deposit)
--

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the New Pre-Appeal Brief Conference Pilot Program, announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal.

REMARKS

Claims 1-13, 15, 18-25, 27-34 and 37-88, 90-107 and 109-114 were rejected under 35 U.S.C. § 103(a) as allegedly being disclosed by the article by David King (hereinafter "King") in view of U.S. Patent Application Publication 2002/0002586 A1 to Rafal et al. (hereinafter "Rafal"). Claims 14 and 26 were rejected under 35 U.S.C. § 103(a) as allegedly being disclosed by King in view of Rafal and further in view of U.S. Patent Application Publication 2002/0087344 A1 to Billings. Claims 16, 17, 35 and 36 were rejected under 35 U.S.C. § 103(a)

DLMR_300029.1

-1-

Atty. Dkt. No. 048772-2300
(formerly 0001.US00)

as allegedly being disclosed by King in view of Rafal and further in view of U.S. Patent Application Publication 2001/0049616 A1 to Khuzadi. Claims 89 and 108 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over King in view of Rafal and further in view of U.S. Patent Application Publication 2001/0049616 A1 to Khuzadi. Applicant respectfully traverses these rejections for at least the following reasons.

The Examiner relies on King for the rejection of each claim. Applicant has previously submitted an affidavit from inventors Dr. Harry Gruber and Dr. Allen Gruber, along with documentation exhibiting conception of the invention prior to the August 10, 2000, date of King. Accordingly, all rejections relying on King as a prior art reference should be withdrawn.

However, the Examiner argues that King's "dating of the use of virtual plaques ... has been clarified and strengthened by the IDS documents filed by Applicant on January 14, 2006" Office Action dated November 17, 2006, page 15, lines 16-18. The Examiner further argues that the IDS documents "make moot Applicant's affidavit" Office Action dated November 17, 2006, page 16, line 8.

Applicant notes that, in light of the affidavit filed by Applicant, the Examiner's reliance on King is improper. The affidavit effectively "establish[ed] invention of the subject matter of the rejected claim[s] prior to the effective date of the reference" See 37 C.F.R. § 1.131. Nothing about the IDS documents changes the "effective date" of King, which remains August 10, 2000. King remains predated by the present invention. Applicant is unaware of any authority which cures this deficiency of King.

In order to reject a claim under 35 U.S.C. § 103(a), the claimed invention must be "disclosed or described as set forth in section 102 of this title." 35 U.S.C. § 103(a). King has previously been applied as a reference under 35 U.S.C. § 102(a), which precludes patents if the invention is "described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent" 35 U.S.C. § 102(a) (emphasis added).

DLMR_300029.1

-2-

Atty. Dkt. No. 048772-2300
(formerly 0001.US00)

As established by Applicant's affidavit filed January 16, 2006, King was published after "the invention thereof by the applicant." Thus, King no longer satisfies the requirements for a reference under 35 U.S.C. § 102(a). Further, King fails to satisfy the requirements for a reference under any other section of 35 U.S.C. § 102. Thus, King cannot be relied upon to reject the pending claims.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

Respectfully submitted,

Date February 14, 2007

FOLEY & LARDNER LLP
Customer Number: 30542
Telephone: (858) 847-6860
Facsimile: (858) 792-6773

By Sanjeev K. Dhand

Sanjeev K. Dhand
Attorney for Applicant
Registration No. 51,182